


CONCLUSION

Based on the foregoing, the Court finds that Petitioner's claims are barred from review by this Court. Therefore, the instant petition for habeas corpus relief is denied.

SO ORDERED.

Dated: ~~June~~^{July 8}, 1998
Brooklyn, NY



U.S.D.J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DERRICK COOPER,

Petitioner,

94-CV-5958

- against -

MEMORANDUM AND
ORDER

E.S. LEFEVRE, Superintendent of
Franklin Correctional Facility,

Respondent.

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A P P E A R A N C E S:

DERRICK COOPER

Reg. No. 91A-2062

Franklin Correctional Facility

P.O. Box 10

Malone, New York 12953

Petitioner, Pro se

CHARLES J. HYNES

Kings County District Attorney

Municipal Building

Brooklyn, New York 11201

By: Ann Bordley, Esq.

Assistant District Attorney

Attorney for Respondent

JOHNSON, District Judge:

Before this Court is a petition brought by Derrick Cooper ("Petitioner") for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. In his pro se petition, Petitioner argues: (1) that he was denied his due process right to a fair trial when the trial court

erred in admitting testimony relating to uncharged crimes; and (2) that his objection to the admission of this testimony was sufficient to preserve the constitutional issue for review by the New York Appellate Division, Second Department ("Second Department") which abused its discretionary powers in denying Petitioner's appeal when they refused to exercise their "interest of justice" jurisdiction. For the reasons stated herein, the petition is denied.

BACKGROUND

On February 25, 1991, after a jury trial in the New York Supreme Court, Kings County, Petitioner was convicted of attempted murder in the second degree under N.Y. Penal Law §§ 110.00 and 125.25. He was sentenced on March 19, 1991 to a term of imprisonment of 8 1/3 to 25 years. In March of 1993, Petitioner appealed the judgment of conviction to the Second Department claiming: (1) that he was denied his right to a fair trial and due process of law when the trial court allowed a witness to testify that she had seen Petitioner in possession of a gun on two occasions prior to the shooting incident; and (2) that his sentence was harsh and excessive. On June 20, 1994, the Second Department unanimously affirmed Petitioner's conviction. People v. Cooper, 205 A.D.2d 697, 614 N.Y.S.2d 306 (2d Dep't 1994). The court found that Petitioner's claim was not adequately preserved for appellate review as a matter of law, and that his claim of harsh and excessive sentencing was without merit. Id. at 697. On August 31, 1994, Petitioner's application for leave to appeal from the Second Department's decision was denied by the New York Court of Appeals which

found that there were no questions of law presented that were appropriate for review. People v. Cooper, 84 N.Y.2d 824, 617 N.Y.S.2d 144 (1994).

Thereafter, on December 12, 1994, Petitioner filed the instant petition for a writ of habeas corpus.

DISCUSSION

I. Due Process Claim

Petitioner claims that he was denied his due process right to a fair trial when improper evidence was admitted at trial in the form of testimony relating to uncharged crimes. However, Petitioner's claim is procedurally barred from habeas review by this Court.

A district court may not, for reasons of comity and federalism, review the merits of a federal claim when an independent and adequate ground exists at the state level for denying that claim. See Coleman v. Thompson, 501 U.S. 722, 729 (1991); Wainwright v. Sykes, 433 U.S. 72, 87-91 (1977). Such rule applies whether the state law ground is substantive or procedural. See Coleman, 501 U.S. at 729. This independent and adequate state ground doctrine serves to bar federal habeas petitions when a state court has declined to address a petitioner's federal claims because the petitioner had failed to satisfy a state procedural requirement. Id. at 729-30. The state court judgments in such cases rest on "independent and adequate state procedural grounds." Id. In particular, a petitioner's failure to comply with the

state's contemporaneous objection rule¹ is an independent and adequate ground for denying a habeas petition. See Velasquez v. Leonardo, 898 F.2d 7, 9 (2d Cir. 1990). See also Martinez v. Harris, 675 F.2d 51, 53-54 (2d Cir. 1982); Washington v. LeFevre, 637 F. Supp. 1175, 1176-77 (E.D.N.Y. 1986).

In this case, the Second Department held that the Petitioner violated the contemporaneous objection rule by failing "to raise specific objections to the evidence of uncharged crimes" he cited in his appeal as having deprived him of a fair trial. Cooper, 205 A.D. at 697, 614 N.Y.S.2d at 306. Accordingly, the court determined that his contentions were unpreserved for appellate review. Id. This Court finds that the Second Department's basis for denying Petitioner's claim was both independent of the federal question raised by such claim and adequate to support the judgment. As a result, this Court is procedurally barred from reviewing the merits of Petitioner's claim. See Velasquez, 898 F.2d at 9. See also Wainwright, 433 U.S. at 87-91.

Nevertheless, Petitioner may overcome this procedural default by establishing both a cause for his default and a resulting prejudice or harm which can be directly attributed to this default, or by demonstrating that failure to consider the federal claim will result in a fundamental miscarriage of justice. See Coleman, 501 U.S. at 750; Reyes v. Keane, 118 F.3d 136, 137 (2d Cir. 1997). See also Washington v. James,

¹ It is well settled that the contemporaneous objection rule is a procedure used by the state courts to make trial proceedings as free of error as possible. Wainwright, 433 U.S. at 90.

996 F.2d 1442, 1447 (2d Cir. 1993). Petitioner has failed to make either showing.

First and foremost, Petitioner does not establish adequate cause for his default.

The Supreme Court has explained that cause exists when it can be shown that "an objective factor external to the defense impeded counsel's efforts to comply with the State's procedural rule." See Murray v. Carrier, 477 U.S. 478, 488 (1986). Petitioner has not demonstrated that such an external factor caused his procedural default. In fact, Petitioner had ample opportunity to object to the admission of improper testimony during the trial, evinced by his objection to parts of that testimony on other grounds. (Trial Transcript at 107-08). Yet, Petitioner failed to make a timely and specific objection to the evidence about which he complains. The Court finds that the mere failure to properly object does not amount to sufficient cause.

Likewise, Petitioner fails to demonstrate sufficient prejudice attributable to the procedural default. The Supreme Court has opined that only actual prejudice will excuse a procedural default. See Coleman, 501 U.S. at 750. Therefore, the trial error complained of must have worked to the petitioner's "actual and substantial disadvantage, infecting his trial with error of constitutional dimensions." Holland v. Scully, 797 F.2d 57, 69 (2d Cir. 1986) (quoting United States v. Frady, 456 U.S. 152, 170 (1982)). Such prejudice has not been shown by Petitioner.

This Court finds that Petitioner has not established sufficient cause or prejudice to overcome his procedural default. Furthermore, the Court concludes that its decision against considering the merits of Petitioner's claim will not result in a

fundamental miscarriage of justice. Accordingly, Petitioner's habeas petition must be dismissed.

II. Abuse of Discretion Claim

Petitioner's second contention, that the Second Department abused its discretion in not reviewing Petitioner's claims through its "interest-of-justice" jurisdiction is also not reviewable by this Court. A state court's "interest-of-justice" jurisdiction is of a limited scope, and is rarely invoked. See Martinez, 675 F.2d at 54 (citing People v. Robinson, 36 N.Y.2d 224, 367 N.Y.S.2d 208 (1975)). See also Holland, 797 F.2d at 69. When a state court acts, or chooses not to act, in their "interest-of-justice" jurisdiction, it is necessarily a matter of discretion. See N.Y. Crim. Proc. Law § 470.15(3)(c). Nevertheless, "it is not the province of a federal habeas court to reexamine state-court determinations on state-law questions." Estelle v. McGuire, 502 U.S. 62, 67-68 (1991). Accordingly, this Court is without jurisdiction to reach this claim.